

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA

versus

WILMAR RENE DURAN GOMEZ

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CRIMINAL NO. H-10-459-S

DEFENDANT'S UNOPPOSED MOTION FOR CONTINUANCE

TO THE HONORABLE JUDGE KENNETH HOYT:

COMES NOW WILMAR RENE DURAN GOMEZ, Defendant, by and through his attorneys of record, WENDELL A. ODOM, JR. and NEAL DAVIS, III, and hereby requests this honorable Court consider the merits of this motion and, in turn, grant this motion based upon the following:

I

The above styled and numbered cause is set for a jury trial on February 10, 2014, with jury selection beginning on January 21, 2014 (Doc. 185).

II

On October 4, 2012, the government filed a Notice of Intent to Seek the Death Penalty (NOI) against the defendant, Wilmar Rene Duran Gomez. (Doc. 137). The original trial date for this case was set for November 13, 2012, thirty-five days from the filing of the NOI. The defendant requested a motion to continue (Doc. 139), which was granted with a trial date set for April 23, 2013. Counsel filed an unopposed motion to continue on March 18, 2013, which was granted setting the present trial date. (Doc. 185).

On April 9, 2013, Efrain Rodriguez Mendoza was arrested. Mendoza, who is also eligible for the death penalty, had remained at large since the inception of this case. Mendoza has been

appointed two attorneys and is currently in the pre-authorization phase for determination if the government will seek death. It is not anticipated that that decision will be made before the date this case is set for trial. Mendoza, as a co-defendant, has been accused of being intricately involved in the deaths of the two individuals in this case. Consequently, Mendoza is material to Duran's defense – whether he is a trial co-defendant or one who will testify against Duran. Counsel requests a continuance until after the government determines whether or not they will seek death against Mendoza.

Furthermore, counsel would request the Court allow more time to continue the discovery and investigation into the matters in this case as well as develop the necessary mitigation issues for punishment in this death penalty case.

III

Counsel has spoken to the Assistant United States Attorneys in this cause, Ruben Perez and Joe Magliolo, who are not opposed to the filing of this motion.

IV

The Defendant respectfully requests that this Court grant a continuance for the aforementioned reasons and would show that the ends of justice would best be served by the granting of such continuance and that the granting of such continuance outweighs the best interest of the public and the Defendant to a speedy trial pursuant to Title 18 U.S.C., § 3161(h)(7)(A); and furthermore, such period of delay due to a continuance would be excludable as a failure to grant such continuance would deny counsel for the defendants the reasonable time necessary for effective preparation taking into account the exercise of due diligence as pursuant to 18 U.S.C. § 3161(h)(7)(B)(ii).

This motion is made in the interest of justice and not for the purposes of delay.

WHEREFORE, PREMISES CONSIDERED, Defendant prays this Court grant this motion and in the interest of justice continue this cause so that Defendant may receive a fair trial, and for such other and further relief, general or special, at law or in equity, to which he may show himself justly entitled.

Respectfully submitted,

/s/ Wendell A. Odom, Jr.
WENDELL A. ODOM, JR.
Texas State Bar # 15208500
Federal Bar # 0947
440 Louisiana, Suite 200
Houston, TX 77002
(713) 223-5575
(713) 224-2815 (FAX)

/s/ Neal Davis, III
NEAL DAVIS, III
Texas State Bar # 24038541
Federal Bar # 706329
440 Louisiana, Suite 200
Houston, TX 77002
(713) 223-5575
(713) 224-2815 (FAX)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **Motion to Continue** was delivered via electronic filing to the Assistant United States Attorneys, as well as counsel to the co-defendants in this cause on October 31, 2013.

/s/ Neal Davis, III
NEAL DAVIS, III

CERTIFICATE OF CONFERENCE

Counsel has spoken to the Assistant United States Attorneys in this cause, Ruben Perez and Joe Magliolo, who are not opposed to the filing of this motion.

/s/ Neal Davis, III
NEAL DAVIS, III